MONTANA LEGISLATIVE HISTORY

Chapter 245 19 53

Bill H 179 (545) S _____ Original bill & history ✓ C

H. Committee on Oil + Gas			S. Committee on Oil + Gas		
Hearing Date(s)	2/6	✓ C	Hearing Date(s)	_____	___ C
	2/13	✓ C		_____	___ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

No Senate Committee minutes recorded

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

Chap.	Senate Bill No.	House Bill No.	Title	Page
			tions, Appropriate to Both the Professional Nursing Administration and the Practical Nursing Administration, Within the Limits of the Subject Matter of This Act; to Provide for Licensing of Each Class of Nurses, After Examination or by Endorsement Without Examination; to Fix the Qualifications of Applicants for Licenses in Each Field, and to Authorize the Use of Appropriate Titles and Abbreviations of Titles for Each Class of Nurses; to Provide for Renewal of Licenses; to Invest the Board With Designated Disciplinary Powers to Be Exercised Subject to Due Process of Law; to Provide for the Exemption of Certain Persons from the Operation of the Act Under Designated Circumstances; to Fix Penalties for Violations of the Act; to Provide for Judicial Review of the Acts of the Governor and of the Board in Connection With the Operation and Administration of This Act; and to Provide for the Orderly Transition of Business from the Existing Montana State Board of Nurse Examiners, and for Coordination With the Preceding Board in the Transfer of Records and Funds to the Board Created by This Act.	596
244		112	An Act to Amend Section 3 of Chapter 199 of the Session Laws of Montana, 1949, Relating to the Foundation Program Schedules for Elementary Schools and High Schools and the Relationship Thereof to the Distribution and Apportionment of the Moneys Coming Into the State Public School Equalization Fund, for the School Years Beginning July 1, 1953 and Ending June 30, 1954, and Beginning July 1, 1954 and Ending June 30, 1955.	614
245		Sub. 179	An Act to Amend Sections 93-9902, 93-9903, 93-9908 and 93-9911 of the Revised Codes of Montana of 1947, All Relating to the Right of Eminent Domain, and to Enact Other Provisions Relating Thereto, Said Amendments and Additional Enactments Relating to and Providing for the Condemnation of Sands, Strata and Formations in Land for Use as Underground Gas Storage Reservoirs and Other Property for Use in Connection Therewith.	618
246		215	An Act to Authorize the State of Montana to Become Indebted for the Sum of Two Million Dollars ($2,000,000.00) in Excess of the Constitutional Limitation of Indebtedness and Over and Above Any Bonded Indebtedness Heretofore Incurred or Created and for Which the State of Montana Is Now Obligated for the Construction and Equipment of Necessary Buildings and Other Permanent Improvements for the Montana State Hospital for the Insane at Warm Springs, Montana; Providing for the Issuance of Bonds in the Name of the State of Montana as Evidence of Such Indebtedness and for the Sale Thereof; Prescribing the Form of Such Bonds and Providing for a Levy of an Annual Tax Sufficient to Pay the Principal Thereof and the Interest Accruing Thereon; and Providing for a Referendum of This Act.	623
247		221	An Act to Amend Section 75-1723, Revised Codes of Montana, 1947, as Amended by Section 10 of Chapter 199 of the Session Laws of Montana of 1949, and as Amended by Section 2 of Chapter 208 of the Session Laws of Montana of 1951, and to Amend Section 75-3801 of the Revised Codes of Montana, 1947, as Amended by Section 12 of Chapter 199 of the Session Laws of Montana of 1949, and as Amended by Section 1 of Chapter 210 of the Session Laws of Montana, 1951, Relating to the Levy of District School Taxes for the Foundation Program and Approved Additions Thereto, and Providing for Any Additional Tax	

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Coll. No._____ Bx/Fd No._____

SUBSTITUTE HOUSE BILL No. 179

INTRODUCED BY COMMITTEE ON OIL AND GAS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 93-9902, 93-9903, 93-9908, 93-9911, 93-9912, 93-9915 and 93-9920 OF THE REVISED CODES OF MONTANA OF 1947, ALL RELATING TO THE RIGHT OF EMINENT DOMAIN, AND TO ENACT OTHER PROVISIONS RELATING THERETO, SAID AMENDMENTS AND ADDITIONAL ENACTMENTS RELATING TO AND PROVIDING FOR THE CONDEMNATION OF SANDS, STRATA AND FORMATIONS IN LAND FOR USE AS UNDERGROUND GAS STORAGE RESERVOIRS AND OTHER PROPERTY FOR USE IN CONNECTION THEREWITH."

Be It Enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 93-9902 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9902. What are public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city or town; raising the banks of streams, removing obstructions therefrom and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turn-pike roads, railroads, canals, ditches, flumes, aqueducts and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs

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and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground storage of natural gas which has been produced from the earth in its original state, or such gas after the same has been processed or treated, in underground reservoirs, suitable for the injection and storage of natural gas therein and the withdrawal of the stored gas therefrom by any public utility engaged in the transportation or distribution of natural gas if such underground storage promotes the conservation of natural gas, or permits the accumulation of natural gas reserves in an underground reservoir, in order to make natural gas more readily available to domestic, commercial and industrial consumers.

Section 2. That Section 93-9903 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9903. What estates in land may be acquired by condemnation. The following is a classification of the estates and rights in lands subject to be taken for the public use:

1. Such estate or rights as may be necessary up to and including a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs, or dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for

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the deposit, of debris or tailings of a mine, *or for an underground reservoir suitable for the underground storage of natural gas and for the injection and storage of natural gas therein and the withdrawal of the stored gas therefrom.*

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of land, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use."

Section 3. That Section 93-9908 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9908. The complaint and its contents. The complaint must contain.

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of plaintiff.

4. If a right-of-way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. *If a sand, stratum or formation known to be suitable for use as an underground gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder*

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and a statement that the rights and property sought to be appropriated are not prohibited from being appropriated by the provisions of Section 9 hereof.

Section 4. That Section 93-9911 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9911. Power of court to appoint commissioners, etc. The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, Section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner, or other person interested in such property, as damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

5. *If the property sought to be appropriated is a sand, stratum or formation known to be suitable for use as an underground gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners so appointed to ascertain and determine the amount to be paid by the plaintiff to each owner or other person interested in the property sought to be appropriated for use as such underground gas storage reservoir, and for use in connection with the creation, operation and maintenance thereof, as compensation and damages by reason of the appropriation of such property. The court shall appoint not more than three persons, qualified as experts in the estimation of natural gas reserves, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each owner, or other person interested in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.*

Section 5. That Section 93-9912 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

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"93-9912. Meeting of commissioners. The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully and impartially discharge the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegation and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

1. The value of the property sought to be appropriated, and all improvements thereon pertaining to the realty, and of each and every separate estate and interest therein; if it consist of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

2. If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damage assessed under subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle-guards where fences may cross the line of such railroad.

5. *When it is sought to appropriate for use as an underground gas storage reservoir, a sand, stratum or formation, which contains native gas capable of being produced, then the commissioners shall also ascertain the quantity of native gas therein that is ultimately recoverable in accordance with sound gas field practices, and the share thereof to which each person interested in said gas is entitled. Subject to existing contractual obligations relating thereto, each person interested in such gas may elect, after notice has been served upon him of the filing of the report of the commissioners, to take his share of gas in gas of like grade and quality, with appropriate adjustment for difference in heating value, in lieu of the money value of his share. In this case, the elector shall have his gas delivered to him free of cost on the premises into a pipe line provided by him, and in such daily*

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and yearly quantities as he may specify from time to time; or in lieu of such election, any person owning or operating facilities producing gas from the sand, stratum or formation constituting the underground storage reservoir, may elect to continue in the possession and operation of his producing facilities and take thereby gas from the underground gas storage reservoir, equal to the quantity of gas determined to be the share or shares he would have been entitled to take and produce from the sand, stratum or formation constituting the underground gas storage reservoir had the same not been condemned, provided, however, that such production and taking shall be subject to existing contractual obligations relating to such gas. Under either of the foregoing elections, the daily rate of delivery to such person, or the daily rate of production by him, shall not exceed the maximum daily production from his property during the twelve month period next preceding the condemnation and the daily and yearly quantities shall not exceed the maximum daily and yearly quantities producible from his property under sound engineering gas field practices. Nothing in either of the elections hereinabove provided shall be construed to prejudice the right of the plaintiff to commence forthwith the injection of natural gas through its own wells into said underground gas storage reservoir or the withdrawal of said stored gas. When any person electing to produce his gas as hereinabove provided shall have produced the entire quantity of gas which is he is entitled to produce, he shall plug and abandon all of his wells that produced from the underground gas storage reservoir unless it is otherwise agreed by the parties. Gas taken from the underground gas storage reservoir shall be accurately metered by the producer and the records and charts of such production made available to the other persons concerned who shall have the right at all reasonable times to inspect and read such meter or meters. If neither of the elections hereinabove provided is exercised by any interested party within a period of twenty (20) days after notice has been served upon him of the filing of the report of the commissioners or within such further time as the court, for cause shown, may allow, such party failing to make such election shall be paid in cash the full amount awarded to him by the commissioners.

6. As far as practicable, compensation must be assessed for each source of damage separately."

Section 6. That Section 93-9915 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9915. Appeal from assessment of commissioners. An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners if filed by any party interested. Such appeal must be taken within the period of thirty (30) days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his at-

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torney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled, by reason of the appropriation of his property, shall be re-assessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners; upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement, and to take, use and appropriate the property described in such verdict or assessment, for the use and purposes for which said land has been condemned, shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors or assigns forever. In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount of damages finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such railroad, seeking to condemn its right of way under and pursuant to the provisions of this act; provided, such condemnation proceedings are begun within one year after such preliminary survey.

Appeals from an assessment made by the commissioners of the compensation and damages to be paid on account of the appropriation of any sand, stratum or formation for use as an underground gas storage reservoir, are included among the appeals allowed to be taken by this section.

Any determination made by the commissioners pursuant to paragraph 5 of Section 93-9912 of the Revised Codes of Montana of 1947, as amended by Section 5 hereof, may be reviewed on an appeal from any assessment of the commissioners involving the same, and the right of election provided for therein shall continue to and including the 20th day after the verdict on appeal becomes final.

In any case involving the matters and things set forth in paragraph 5 of Section 93-9912 of the Revised Codes of Montana of 1947, as amended by Section 5 hereof, upon the verdict or the assessment of the commissioners becoming final, judgment shall be entered declaring, with respect to all persons entitled to make either of the elections provided

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for in said paragraph 5, but who fail to do so, that upon the payment of the verdict or assessment with respect to their property, together with the interest and costs allowed by law, if any, the right to use the sand, stratum or formation exclusively for an underground gas storage reservoir, and the right to create, operate and maintain the same, and the right to take, use and appropriate the property described in such verdict or assessment, for, or in connection with, such use, and the ownership of their respective shares in the gas as determined by such verdict or assessment, shall as against said persons be and remain in the plaintiff, his or its heirs, successors and assigns forever, but with respect to the persons who are entitled to make either of the elections above referred to and who elected either to take their shares of the gas in gas of like grade and quality in lieu of the value of their respective shares in the gas, or to operate their producing facilities to take the gas which they were entitled to produce, the judgment shall declare the respective rights of such persons either to take gas or to produce gas up to the maximum quantity determined with respect to them by the verdict or assessment in lieu of the value of their shares as determined by said verdict or assessment; and declare the right to use the sand, stratum or formation exclusively for an underground gas storage reservoir and the right to create, operate and maintain the same and to take, use and appropriate the property described in such verdict or assessment and the ownership thereof shall as against all persons be and remain in the plaintiff, his or its heirs, successors and assigns forever, subject only to appropriate provisions for the operation of said producing facilities by such person electing to operate the same for the purpose of producing and taking gas in accordance with the election made pursuant to the provisions of said paragraph 5.

Section 7. That Section 93-9920 of the Revised Codes of Montana of 1947, be, and the same is hereby amended to read as follows:

"93-9920. Putting plaintiff in possession. At any time after the report and assessment of damages of the commissioners have been made and filed in the court, and either before or after appeal from such assessment, or from any other order or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiff, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation, and that all actions and proceedings against the plaintiff

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on account thereof be stayed until such time; provided, however, that when an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount of damages assessed, to give bond or undertaking, with sufficient sureties, to be approved by by the judge and to be in such sum as the court or judge may direct, conditioned to pay defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

The amount assessed as damages by the commissioners, or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until re-assessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed, or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession, or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute his appeal from such assessment; provided, that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and, provided, further, that upon any appeal from assessment of damages by the commissioners to a jury, the jury may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners.

Section 8. Exemptions of certain sands, strata and formations from condemnation for use as an underground gas storage reservoir. No sand, stratum or formation shall be subject to appropriation for use as an underground gas storage reservoir, if within the exterior boundaries of the reservoir, or proposed reservoir, such sand, stratum or formation is known or is found by the court: (1) to contain oil capable of being produced in

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paying quantities under any known recovery method, or (2) to contain any gas capable of being produced in paying quantities unless both that the quantity of native gas ultimately recoverable therefrom in paying quantities has been reduced to a state of substantial depletion, and that such sand, stratum or formation has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas for any particular class or group of consumers of natural gas, or for the conservation of natural gas, than for the production of the relatively small volume of native gas which remains therein, or, (3) to provide water for any existing water well or water wells within said exterior boundaries, or if said sand, stratum or formation is being used by anyone other than the plaintiff for the underground storage of natural gas or other hydro-carbons.

Section 9. The appropriation of any sand, stratum or formation for use as an underground gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands, or of the oil, gas or other mineral rights therein, to drill or bore through the sand, stratum or formation so appropriated for use as an underground gas storage reservoir, in order to explore for, produce, process, treat or market any oil, gas or other minerals that might be contained in said lands above or below the sand, stratum or formation so appropriated. Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom, by reason of such boring or drilling through of the sand, stratum or formation used as such underground gas storage reservoir shall be paid by the public utility then owning such underground gas storage reservoir.

Section 10. Constitutionality. If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

Section 11. All Acts and parts of Acts in conflict herewith are hereby repealed.

COMMITTEE ON OIL AND GAS

Roll Call 1953 Session

	Jan 15	26	28	29	Feb 2	Feb 4	Feb 11	Feb 12	Feb 27										
Sales, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓									
Higgins, Vice Ch.	✓	✓	✓	a	✓	a	✓	✓	✓										
Bricker	✓	✓	✓	✓	✓	✓	✓		✓	✓									
Fulton	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓									
Haines(Flathead)	✓	✓	✓	✓	✓	✓		✓	✓	✓									
Hilger	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓									
Juedeman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓									
O'Connor	✓	✓	a	✓	✓	a	✓	✓	✓	✓									
Schiltz	✓	✓	a	✓	✓	✓	✓	✓	✓	✓									
Watkins	✓	✓	a	a	a	a													
Emmons	✓	✓	✓	✓	a	a	✓												
Gershmel	✓	✓	✓	✓	a	✓	✓	✓		✓									
Goodgame	✓	✓	✓	✓	a	✓	✓	✓	✓	✓									
Marsenich	✓	✓	✓	✓	a	a	✓												
Parker	✓	a	a	a	✓	✓	✓	✓	✓	✓									

COMMITTEE ON OIL AND GAS
February 6, 4:00 to 6:30, Sales presiding

H. B. 179---The following proponents of the bill were heard: concerning underground storage and providing for eminent domain.

Fred Gamble, finance officer and director of the Montana-Dakota Utilities Company. Part of his job is to look to the future as much as 20 years hence. They had suddenly found everyone wanting to use gas in the home due to its cheapness, and had to impose restrictions on the use of gas. Without exception all the reservoirs in Montana are substantially depleted and unless some means is found, most Montana users will find themselves drastically restricted. The only way they know of providing for the future is to use some of the partly depleted and depleted reservoirs to store natural gas. By using these storage facilities they have been able to furnish gas to all customers without restriction. Many states are adopting underground storage. His company and others finally agreed on amendments to House Bill 179. They would like to present a substitute bill for 179. As a public utility they cannot earn more than 6%. Anything above 6% is given back to the customers as savings. Unless his company can compete with other companies, who are going to pipe gas to Minnesota, etc., Montana will lose this gas. With these reservoirs they can hold rates down and furnish adequate gas. If they cannot use the depleted reservoirs, they will have to build more pipeline at a cost of 1½ million dollars which would raise the rates. Their substitute House bill would give more to the landowners, for the right of eminent domain. Those would be exempt where there is oil still left in the wells. Cost of suit condemning the property would be borne by the utility and they would harvest the oil left in the ground for the original owners. The benefits of this is that the savings are passed on to the users. Before a property can be condemned, it has to be proved that it is in the public interest

R. D. Corette, Montana Power. Montana Power has basically the same problem as the company mentioned above. They are at present storing gas at Three Forks. The problem of eminent domain must come if Montana is going to continue to serve the customers. We are going to have to import natural gas and store it. In the winter supplies become short if it is not stored.

LaRue Smith, Jr., Great Falls, Montana, Attorney for Montana Gas Corporation, Chairman for the Underground Rocky Mountain Gas Assoc., but he is not appearing as a representative of them. He would like to have one thing corrected that has just come to his attention which is that the People's Voice reported that Mr. Corette attended a meeting at Billings which was untrue. Under the enabling act the State Land Board may negotiate. He explained the substitute bill as he helped draft the bill. So far as their companies are concerned, they believe that it is sound to store gas in underground reservoirs; in fact it is the only economical place to store it. They also believe they would have to have eminent domain rights in order to do it; and that underground storage is in the public interest. The point of depletion is very difficult of definition. Federal lands cannot be condemned. Producing oil areas are not affected.

Opponents of the bill were:

M. E. Porter, Shelby, Montana, representing the Porter Oil Co. He attended a meeting of Montana-Dakota Utilities Company. They mentioned Baker field as a storage field. He wondered how they were going to determine the rights of each individual lease owner. He wants consideration given to a fair price for what they have left in the fields.

Leif Ericson, Helena, Montana. His clients are: Cedar Creek Oil and Gas Co., Mondakota Oil, International Distributing Co., Susan M. White, John White, Midwest Holding Co., H. C. Smith, and W. B. Haney. All these people are in the Cedar Creek area. Montana-Dakota Utilities Company is the operator in this field. The passage of this bill would substantially reduce the prive of gas to these clients. They reduced the take of gas from them under the unitization agreement. He is against it because it is special legislation. Montana-Dakota has made no attempt to buy depleted reservoirs. It is designed to benefit one company. There is not a state that says you can condemn a gas structure when it is depleted. There is simply no way to determine substantial depletion. It may be taken for the public good— It is costly to try such cases for the small landowner; highly technical to determine the amount of the damage. Long drawnout proceedings. This bill would act as a club for the Montana Dakota Utilities Co. to use over people with whom they have to deal. The seller would have to furnish a transcript which is expensive. The public will not be served by this bill. This bill would allow them to store gas which they have committed themselves to take from the Puroil Corporation and would put a cloud on the title of lands. He presented a substitute bill of his own. Under substitute bill 179 the landowner would be at a terrific disadvantage.

Lou Ketter, of Montana Power, appeared but did not know the answers to the questions asked.

Bricker moved that a committee be appointed to study these bills, seconded by Fulton. Motion carried and the following were appointed: O'Connor, Parker and Haines.

Mr. Sales gave H. B. 174 to Juedeman for study and H. B. 209 to Hilger.

Meeting adjourned.

Sales, ~~Chairman~~

Wetzsteon, Clerk

COMMITTEE ON OIL AND GAS
February 13, 1953, 4:00-6:00, Sales presiding

H. B. 209 concerns registration of seismograph operators. Fulton moved that this bill be amended by striking out "a judge of the District Court" and inserting in lieu thereof "the County Attorney" and further strike out the words 60-day and insert in lieu thereof twelve months. Hilger seconded the motion and it carried. Hilger moved that the bill DO PASS AS AMENDED, seconded by Fulton. Motion carried.

Substitute House Bill 179. -

C. J. McDonald, Shelby, said that he was representing himself. He is opposed to it because it deprives a man of his own rights and his own deals on his own property. He believes the gas companies can get underground storage without resorting to this law. The court would appoint a commission to evaluate the property being condemned; it is a complicated bill; he does not want to get into litigation and have his property tied up; and he does not want to be forced into it.

Joe Oien, Kevin-Sunburst. He believes the principle of underground storage is sound, but he is against the idea of condemnation and sees no reason why a deal cannot be made. Under the bill there would be a lot of court action.

J. R. Engelkin, Kevin. He is both in the oil producing industry and in the livestock industry. From his viewpoint in the oil industry if he wants to drill through the storage sands, it would cost him a lot if he would want to drill below to protect the storage sand. He believes there is a lawsuit on every page. He and his neighbors feel they would like to have the right to vote on the bill themselves through the referendum.

Bruce McNaber. It seems to him that the small landowners or operators would be at a disadvantage. It places a great responsibility on the legislators to place this business in eminent domain. He does not think it is a good thing. What is the meaning of substantial depletion? He doubts if there is a need for the good of Montana users. We have not adequately investigated for gas wells in Montana.

M. E. Porter. The custom is to locate storage in sections near to consumer areas. Montana is a producer of gas and not a large user of gas. He doesn't think condemnation proceedings are necessary at this time. He doesn't believe there is much possibility for storage in the northern fields. The Montana-Dakota Co. told him only of the Baker Field. He does not think it good policy to put the entire state in eminent domain just to put one field in underground storage. The bill exempts producing wells and it puts the operator where he has to hire experts to see if the wells are operating profitably. If the pressure in the pipeline is greater than the pressure from the operator's well, they will say the well is depleted because it will not put gas into the pipeline. There is a difference of opinion even among experts as to substantial depletion. There are only three states that have actual condemnation.

Subcommittee report on the bill. O'Connor reported that the subcommittee was in favor of the bill with the amendments. Bricker moved that the bill be amended as to Section 14 as read and that it Do pass, seconded by O'Connor. The vote was tied. O'Connor moved that House Bill 179 DO NOT PASS, but that Substitute House Bill 179 be printed and placed on General Orders. Seconded by Bricker. Motion carried.

Meeting adjourned.

Chairman

Wetzsteon, clerk

CHAPTER 245

An Act to Amend Sections 93-9902, 93-9903, 93-9908 and 93-9911 of the Revised Codes of Montana of 1947, All Relating to the Right of Eminent Domain, and to Enact Other Provisions Relating Thereto, Said Amendments and Additional Enactments Relating to and Providing for the Condemnation of Sands, Strata and Formations in Land for Use as Underground Gas Storage Reservoirs and Other Property for Use in Connection Therewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That Section 93-9902 of the Revised Codes of Montana of 1947 be, and the same is hereby amended to read as follows:

Enumerating public uses.

"93-9902. **What Are Public Uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with

water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted."

Adding underground gas storage reservoirs.

14. Underground barren reservoirs suitable for storage of natural gas, except that this subsection 14 shall only apply to a sand stratum or formation known to be suitable for use as an underground gas storage reservoir.

Amending clause.

Section 2. That Section 93-9903 of the Revised Codes of Montana of 1947 be, and the same is hereby amended to read as follows:

Estates which may be acquired by condemnation.

"93-9903. **What Estates in Land May Be Acquired by Condemnation.** The following is a classification of the estates and rights in lands subject to be taken for the public use:

Estates.

1. Such estate or rights as may be necessary up to and including a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs *other than underground reservoirs provided for in subsection 14 of section 1 of this act* or dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

Excepting underground reservoirs from estates up to fee simple.

Easements.

2. An easement, when taken for any other use.

Rights of entry.

3. The right of entry upon and occupation of land, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Amending clause.

Section 3. That Section 93-9908 of the Revised Codes of Montana of 1947 be, and the same is hereby amended to read as follows:

Contents of complaint for condemnation.

"93-9908. **The Complaint and Its Contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of plaintiff.

4. If a right-of-way *is* sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff."

Adding provisions for underground storage reservoirs.

6. If a sand, stratum or formation known to be suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the state oil and gas conservation commission, setting forth its findings as to the existence of all of the facts contained in this paragraph.

Amending clause.

Section 4. That Section 93-9911 of the Revised Codes of Montana of 1947 be, and the same is hereby amended to read as follows:

Power of court to appoint commissioners.

"93-9911. **Power of Court to Appoint Commissioners, etc.** The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in said county, commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner, or other person interested in such property, as damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror."

Adding provisions for underground storage reservoirs.

5. If the property sought to be appropriated is a sand, stratum or formation known to be suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners so appointed to ascertain and determine the amount to be paid by the plaintiff to each owner or other person interested in the property sought to be appropriated for use as such underground natural gas storage reservoir, and for use in connection with the creation, operation and maintenance thereof, as compensation and damages by reason of the appropriation of such property.

Experts recommended by oil and gas conservation commission.

The court shall appoint three persons, qualified as experts and recommended as such by the oil and gas conservation commission of the State of Montana, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each owner, or other person interested in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

Right of way through reservoir area preserved for mineral right owners.

Section 5. The appropriation of any sand, stratum or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands, or of the oil, gas or other mineral rights therein, to drill or bore through the sand, stratum or formation so appropriated for use as an underground natural gas storage reservoir, in order to explore for, produce, process, treat or market any oil, gas or other

minerals that might be contained in said lands above or below the sands, stratum or formation so appropriated. Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom, by reason of such boring or drilling through of the sand, stratum or formation used as such underground gas storage reservoir shall be paid by the persons, firm or corporation then owning such underground gas storage reservoir.

Severability.

Section 6. **Constitutionality.** If any part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

Repealing clause.

Section 7. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1953.

CHAPTER 246

An Act to Authorize the State of Montana to Become Indebted for the Sum of Two Million Dollars ($2,000,000.00) in Excess of the Constitutional Limitation of Indebtedness and Over and Above Any Bonded Indebtedness Heretofore Incurred or Created and for Which the State of Montana is Now Obligated for the Construction and Equipment of Necessary Buildings and Other Permanent Improvements for the Montana State Hospital for the Insane at Warm Springs, Montana; Providing for the Issuance of Bonds in the Name of the State of Montana as Evidence of Such Indebtedness and for the Sale Thereof; Prescribing the Form of Such Bonds and Providing for a Levy of an Annual Tax Sufficient to Pay the Principal Thereof and the Interest Accruing Thereon; and Providing for a Referendum of This Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That the state board of examiners of the State of Montana is hereby authorized and empowered to issue